

Office of the Secretary of Labor

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rate for the work they perform when they are employed and individually registered in a bona fide apprenticeship program registered with a State Apprenticeship Agency which is recognized by the U.S. Department of Labor, or if no such recognized agency exists in a State, under a program registered with the Bureau of Apprenticeship and Training, Employment and Training Administration, U.S. Department of Labor. Any employee who is not registered as an apprentice in an approved program shall be paid the wage rate and fringe benefits contained in the applicable wage determination for the journeyman classification of work actually performed. The wage rates paid apprentices shall not be less than the wage rate for their level of progress set forth in the registered program, expressed as the appropriate percentage of the journeyman's rate contained in the applicable wage determination. The allowable ratio of apprentices to journeymen employed on the contract work in any craft classification shall not be greater than the ratio permitted to the contractor as to his entire work force under the registered program.

(q) Where an employee engaged in an occupation in which he or she customarily and regularly receives more than \$30 a month in tips, the amount of tips received by the employee may be credited by the employer against the minimum wage required by Section 2(a)(1) or 2(b)(1) of the Act to the extent permitted by section 3(m) of the Fair Labor Standards Act and Regulations, 29 CFR Part 531. To utilize this proviso:

(1) The employer must inform tipped employees about this tip credit allowance before the credit is utilized;

(2) The employees must be allowed to retain all tips (individually or through a pooling arrangement and regardless of whether the employer elects to take a credit for tips received);

(3) The employer must be able to show by records that the employee receives at least the applicable Service Contract Act minimum wage through the combination of direct wages and tip credit;

(4) The use of such tip credit must have been permitted under any predecessor collective bargaining agreement

applicable by virtue of section 4(c) of the Act.

(r) *Disputes concerning labor standards.* Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 4, 6, and 8. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(The information collection, recordkeeping, and reporting requirements contained in this section have been approved by the Office of Management and Budget under the following numbers:

Paragraph	OMB control number
(b)(2) (i)–(iv)	1215–0150
(e)	1215–0150
(g)(1) (i)–(iv)	1215–0017
(g)(1) (v), (vi)	1215–0150
(l) (1), (2)	1215–0150
(q)(3)	1215–0017

[48 FR 49762, Oct. 27, 1983; 48 FR 50529, Nov. 2, 1983, as amended at 61 FR 68663, Dec. 30, 1996]

§ 4.7 [Reserved]

§ 4.8 Notice of awards.

Whenever an agency of the United States or the District of Columbia awards a contract subject to the Act which may be in excess of \$10,000 and such agency does not submit Standard Form 279, FPDS Individual Contract Action Report, or its equivalent, to the Federal Procurement Data System, it shall furnish the Wage and Hour Division, ESA, an original and one copy of Standard Form 99, Notice of Award of Contract, unless it makes other arrangements with the Wage and Hour Division for notifying it of such contract awards. The form shall be completed as follows:

(a) Items 1 through 7 and 12 and 13: Self-explanatory;

(b) Item 8: Enter the notation "Service Contract Act;"

(c) Item 9: Leave blank;

(d) Item 10: (1) Enter the notation "Major Category," and indicate beside this entry the general service area into

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which the contract falls (e.g., food services, grounds maintenance, computer services, installation or facility support services, custodial-janitorial service, garbage collection, insect and rodent control, laundry and dry-cleaning services, etc.);

(e) Item 11: Enter the dollar amount of the contract, or the estimated dollar value with the notation “estimated” (if the exact amount is not known). If neither the exact nor the estimated dollar value is known, enter “indefinite,” or “not to exceed \$____.” Supplies of Standard Form 99 are available in all GSA supply depots under stock number 7540-634-4049.

§ 4.9 [Reserved]

§ 4.10 Substantial variance proceedings under section 4(c) of the Act.

(a) *Statutory provision.* Under section 4(c) of the Act, and under corresponding wage determinations made as provided in section 2(a)(1) and (2) of the Act, contractors and subcontractors performing contracts subject to the Act generally are obliged to pay to service employees employed on the contract work wages and fringe benefits not less than those to which they would have been entitled under a collective bargaining agreement if they were employed on like work under a predecessor contract in the same locality. (See §§ 4.1b, 4.3, 4.6(d)(2).) Section 4(c) of the Act provides, however, that “such obligations shall not apply if the Secretary finds after a hearing in accordance with regulations adopted by the Secretary that such wages and fringe benefits are substantially at variance with those which prevail for services of a character similar in the locality”.

(b) *Prerequisites for hearing.* (1)(i) A request for a hearing under this section may be made by the contracting agency or other person affected or interested, including contractors or prospective contractors and associations of contractors, representatives of employees, and other interested Governmental agencies. Such a request shall be submitted in writing to the Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington,

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DC 20210, and shall include the following:

(A) The number of any wage determination at issue, the name of the contracting agency whose contract is involved, and a brief description of the services to be performed under the contract;

(B) A statement regarding the status of the procurement and any estimated procurement dates, such as bid opening, contract award, commencement date of the contract or its follow-up option period;

(C) A statement of the applicant’s case, setting forth in detail the reasons why the applicant believes that a substantial variance exists with respect to some or all of the wages and/or fringe benefits, attaching available data concerning wages and/or fringe benefits prevailing in the locality;

(D) Names and addresses (to the extent known) of interested parties.

(ii) If the information in paragraph (b)(1)(i) of this section is not submitted with the request, the Administrator may deny the request or request supplementary information, at his/her discretion. No particular form is prescribed for submission of a request under this section.

(2) The Administrator will respond to the party requesting a hearing within 30 days after receipt, granting or denying the request or advising that additional time is necessary for a decision. No hearing will be provided pursuant to this section and section 4(c) of the Act unless the Administrator determines from information available or submitted with a request for such a hearing that there may be a substantial variance between some or all of the wage rates and/or fringe benefits provided for in a collective bargaining agreement to which the service employees would otherwise be entitled by virtue of the provisions of section 4(c) of the Act, and those which prevail for services of a character similar in the locality.

(3) Pursuant to section 4(b) of the Act, requests for a hearing shall not be considered unless received as specified below, except in those situations where the Administrator determines that extraordinary circumstances exist: